

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.6 Arraignment/Pretrial Procedures

E. Guilty and Nolo Contendere Pleas

2. Use of Uncounselled Conviction to Enhance Subsequent Charge or Sentence

Effective January 1, 2006, parts of MCR 6.610 relevant to the discussion in this sub-subsection were amended. After the first paragraph on page 57, replace the quoted text of MCR 6.610(E)(2) with the following:

“The court shall inform the defendant of the right to the assistance of an attorney. If the offense charged requires on conviction a minimum term in jail, the court shall inform the defendant that if the defendant is indigent the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended.” MCR 6.610(E)(2).

“Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to an attorney, a subsequent charge or sentence may not be enhanced because of this conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this conviction.” MCR 6.610(F)(2).

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F. Discovery

1. Mandatory Discovery

Effective January 1, 2006, amendments were made to the discovery provisions in MCR 6.201. At the top of page 64, replace the quoted text of MCR 6.201(A)(1)–(6) with the following:

- ♦ The names and addresses of all lay and expert witnesses that may be called at trial, or in the alternative, a party may disclose the name of the witness and make the person available for interview by the opposing party. MCR 6.201(A)(1). The witness list may be amended without leave of the court up to 28 days before trial. *Id.*
- ♦ Any written or recorded statement concerning the case made by a lay witness who may be called at trial, except that a defendant is not required to disclose his or her own statement. MCR 6.201(A)(2).
- ♦ The curriculum vitae of an expert witness who may be called at trial, and either a report by that expert or a written description of the substance of that expert's proposed testimony, the expert's opinion, and the information on which the expert's opinion is based. MCR 6.201(A)(3).
- ♦ Any criminal record that may be used at trial to impeach a witness. MCR 6.201(A)(4).
- ♦ For any witness who may be called at trial, a list or description of criminal convictions known to the defense attorney or the prosecuting attorney concerning that witness. MCR 6.201(A)(5).
- ♦ A description of and an opportunity to inspect any tangible physical evidence, including any document, photograph, or other paper, that may be introduced at trial. MCR 6.201(A)(6). On request, a party must provide copies of any document, photograph, or other paper. *Id.* The party required to provide those copies may request a hearing on any question of the costs of reproduction. *Id.* For good cause, a party may be given the opportunity to test, without destruction, any tangible physical evidence. *Id.*

Effective January 1, 2006, MCR 6.201(B)(2) and (3) were also amended. Replace the last two quoted paragraphs near the bottom of page 64 with the following text:

“(2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation;

“(3) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;”